

FILED IN THE
UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

JUL 24 2007

at 4 o'clock and 00 min. P.M.
SUE BEITIA, CLERK

AO 243 (Rev. 5/85)

MOTION UNDER 28 USC § 2255 TO VACATE, SET ASIDE, OR CORRECT
SENTENCE BY A PERSON IN FEDERAL CUSTODY

United States District Court		District Hawaii
Name of Movant Leslie J. Fernandez	Prisoner No. 95080-022	Case No. CR03-0594-001-SOM
Place of Confinement FCI-Sheridan		

UNITED STATES OF AMERICA

V.

LESLIE JOHN FERNANDEZ,
(name under which convicted)**MOTION**1. Name and location of court which entered the judgment of conviction under attack U.S. District Court, District of Hawaii.2. Date of judgment of conviction August 4, 20063. Length of sentence Ninety-Seven (97) months4. Nature of offense involved (all counts) Conspiracy to distribute and possess with intent to distribute 50 grams of more of methamphetamine in violation of 21 USC § 846.

5. What was your plea? (Check one)

- (a) Not guilty ☐
 (b) Guilty ☒
 (c) Nolo contendere ☐

If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, give details:

NA

6. If you pleaded not guilty, what kind of trial did you have? (Check one)

- (a) Jury ☐ NA
 (b) Judge only ☐

7. Did you testify at the trial?

Yes ☐ No ☐

NA

8. Did you appeal from the judgment of conviction?

Yes ☐ No ☐

NA

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9. If you did appeal, answer the following:

- (a) Name of court _____ NA _____
- (b) Result _____ NA _____
- (c) Date of result _____ NA _____

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications or motions with respect to this judgment in any federal court?
Yes ☐ No ☒

11. If your answer to 10 was "yes," give the following information:

- (a) (1) Name of court _____ NA _____
- (2) Nature of proceeding _____ NA _____

- (3) Grounds raised _____ NA _____
- _____
- _____
- _____
- _____

(4) Did you receive an evidentiary hearing on your petition, application or motion?
Yes ☐ No ☐

- (5) Result _____ NA _____
- (6) Date of result _____ NA _____

(b) As to any second petition, application or motion give the same information:

- (1) Name of court _____ NA _____
- (2) Nature of proceeding _____ NA _____

- (3) Grounds raised _____ NA _____
- _____
- _____
- _____
- _____

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(4) Did you receive an evidentiary hearing on your petition, application or motion?
Yes ☐ No ☐

(5) Result NA

(6) Date of result NA

(c) Did you appeal, to an appellate federal court having jurisdiction, the result of action taken on any petition, application or motion?

(1) First petition, etc. Yes ☐ No ☐

(2) Second petition, etc. Yes ☐ No ☐

(d) If you did not appeal from the adverse action on any petition, application or motion, explain briefly why you did not:

NA

12. State *concisely* every ground on which you claim that you are being held in violation of the constitution, laws or treaties of the United States. Summarize briefly the facts supporting each ground. If necessary, you may attach pages stating additional grounds and facts supporting same.

CAUTION: If you fail to set forth all ground in this motion, you may be barred from presenting additional grounds at a later date.

For your information, the following is a list of the most frequently raised grounds for relief in these proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds which you have other than those listed. However, you should raise in this motion all available grounds (relating to this conviction) on which you based your allegations that you are being held in custody unlawfully.

Do not check any of these listed grounds. If you select one or more of these grounds for relief, you must allege facts. The motion will be returned to you if you merely check (a) through (j) or any one of the grounds.

(a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily or with understanding of the nature of the charge and the consequences of the plea.

(b) Conviction obtained by use of coerced confession.

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- (c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
- (d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
- (e) Conviction obtained by a violation of the privilege against self-incrimination.
- (f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (g) Conviction obtained by a violation of the protection against double jeopardy.
- (h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and imparnelled.
- (i) Denial of effective assistance of counsel.
- (j) Denial of right of appeal.

Ineffective Assistance of Counsel.

A. Ground one: _____

Supporting FACTS (state *briefly* without citing cases or law) _____

Please see attached sheets.

B. Ground two: _____ NA

Supporting FACTS (state *briefly* without citing cases or law): _____ NA

C. Ground three: _____ NA

Supporting FACTS (state *briefly* without citing cases or law): _____ NA

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D. Ground four: NA

Supporting FACTS (state *briefly* without citing cases or law): NA

13. If any of the grounds listed in 12A, B, C, and D were not previously presented, state briefly what grounds were not so presented, and give your reasons for not presenting them: _____

NA

14. Do you have any petition or appeal now pending in any court as to the judgment under attack?
Yes ☐ No ☒

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:

(a) At preliminary hearing Pamela O'Leary Tower

(b) At arraignment and plea Pamela O'Leary Tower

(c) At trial NA

(d) At sentencing Pamela O'Leary Tower

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(e) On appeal NA

(f) In any post-conviction proceeding NA

(g) On appeal from any adverse ruling in a post-conviction proceeding NA

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at approximately the same time?

Yes ☐ No ☒

17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

Yes ☐ No ☒

(a) If so, give name and location of court which imposed sentence to be served in the future:

NA

(b) Give date and length of the above sentence: NA

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?

Yes ☐ No ☒

Wherefore, movant prays that the Court grant him all relief to which he may be entitled in this proceeding.

Resen G. Jernandez
Signature of Attorney (if any)

I declare under penalty of perjury that the foregoing is true and correct. Executed on

July 21, 2007

(date)

Resen G. Jernandez
Signature of Movant